

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

VIRGIN ENTERPRISES LIMITED,

Plaintiff,

v.

JAI MUNDI, INC.,

Defendant.

Civil Action No. 17-CV-02715

**COMPLAINT FOR WILLFUL TRADEMARK INFRINGEMENT,
TRADEMARK DILUTION, BREACH OF CONTRACT,
UNFAIR COMPETITION, AND ILLINOIS STATE CAUSES OF ACTION**

For its complaint against Defendant Jai Mundi, Inc., Plaintiff Virgin Enterprises Limited states as follows:

NATURE OF ACTION

1. This action is for willful trademark infringement, trademark dilution, and unfair competition in violation of the Lanham Act, 15 U.S.C. §§ 1114(1) and 1125(a) and (c); breach of contract; deceptive trade practices under 815 ILCS 505/1, *et seq.*; and unfair competition under Illinois common law.

2. This action results from the Defendant's breach of a settlement agreement and unauthorized use of marks and other designations confusingly similar to Plaintiff's famous VIRGIN trademark beyond the scope of the settlement agreement as detailed herein.

THE PARTIES

3. Plaintiff, Virgin Enterprises Limited, is a company organized under the laws of England and Wales, with its principal place of business at The Battleship Building, 179 Harrow Road, London, UK W2 6NB (“Plaintiff” or “VEL,” or, collectively with its licensees and affiliates, the “Virgin Group”). VEL is the owner, user, and licensor of a portfolio of over 3,000 trademark applications and registrations incorporating the VIRGIN trademark in over 150 countries worldwide. In the United States, VEL owns more than 100 U.S. trademark registrations and applications that include VIRGIN as the dominant element of the mark. These registrations cover an immense range of products and services, including, but not limited to, wine, vodka, water, soft drinks, and restaurant and bar services.¹ The Virgin Group actively does business in Illinois and in this District under the VIRGIN Marks through many ventures, including, for example, its VIRGIN AMERICA and VIRGIN ATLANTIC-branded air travel, VIRGIN MOBILE wireless telecommunications services, and VIRGIN WINES business.

4. Defendant, Jai Mundi, Inc. (“Virgin Vapor” or “Defendant”), is a California corporation with its principal place of business at 801 Bevins Street, Lakeport, California 95453, doing business in Illinois, including in this Judicial District and Division, under the name Virgin Vapor.

¹ The VIRGIN word mark, design mark, and VIRGIN-formative marks together with the marks reflected in Virgin’s applications, registrations, and extensive common law rights in its VIRGIN word and design marks, all referenced throughout this pleading, are hereinafter referred to as the “VIRGIN Mark(s).”

5. Defendant markets and sells electronic cigarettes as well as flavored “e-liquids” used in the practice of “vaping,” (in which flavored, nicotine-containing e-liquids are atomized in a battery-powered device and then inhaled in vapor form). At all relevant times and in contravention the parties’ settlement agreement, Defendant used the designation VIRGIN VAPOR (the “VIRGIN VAPOR Mark”) for its e-liquid and vaping business.

JURISDICTION AND VENUE

6. The Court also has subject matter jurisdiction over VEL’s federal claims pursuant to 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a), which confer original jurisdiction upon the Court for civil actions arising under the laws of the United States and any act of Congress relating to trademarks. The Court also has subject matter jurisdiction over VEL’s federal claims pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between VEL and Defendant, and the amount in controversy, exclusive of interest and costs, exceeds \$75,000. The Court has supplemental jurisdiction over VEL’s breach of contract and other state law claims pursuant to 28 U.S.C. §§1338(b) and 1367.

7. The exercise of personal jurisdiction by the Court over Defendant is appropriate in this instance pursuant to the Illinois long arm statute, 735 Ill. Comp. Stat. 5/2-209 *et seq.*, and such an assertion is in accordance with the Due Process clause of the Fourteenth Amendment of the United States Constitution because, among other things, Defendant is a resident of this District and Defendant has purposefully availed itself of the benefits of doing business in the State of Illinois by advertising and

promoting goods to the residents of Illinois, including via stores located in Illinois and advertised on the VIRGIN VAPOR Website, and by causing injury to VEL within Illinois.

8. This Court has personal jurisdiction over Defendant because Defendant transacts business in this District and has more than sufficient contacts with this District. Defendant operates the VIRGIN VAPOR Website, and maintains Facebook and Twitter pages devoted to the VIRGIN VAPOR Mark and business, all accessible by and targeting residents of Illinois and this District and Division. Thus, Defendant has purposefully availed itself of the benefits of doing business in Illinois by actually transacting business in Illinois, and Defendant can reasonably anticipate being hauled into court in Illinois.

9. This Court has personal jurisdiction over Defendant because, through the VIRGIN VAPOR Website, Defendant has offered and does offer residents of Illinois and this District and Division the opportunity to order electronic cigarettes and e-liquids bearing the VIRGIN VAPOR Mark, directly through said website.

10. Defendant also has made actual sales of products bearing the VIRGIN VAPOR Mark into the State of Illinois and this District and Division.

11. The Court also has personal jurisdiction over Virgin Vapor by stipulation and agreement of the parties in the prior related lawsuit *Virgin Enterprises Limited v. Jai Mundi, Inc.*, Case No. 13-CV-8339.

12. Venue is proper in the Northern District of Illinois pursuant to 28 U.S.C. §§ 1391(b)(1), (b)(2), and (c)(2) because Defendant is subject to personal jurisdiction in this District and therefore is a resident of this District, and because a substantial part of the events giving rise to VEL's claims took place in this District. Moreover, Defendant

transacts business in this District, has committed tortious acts in this District, and has engaged in activities that subject it to the jurisdiction of the Court.

13. Assignment of this action to the Eastern Division is proper because a substantial part of the events giving rise to the claims alleged herein occurred in the Eastern Division.

VEL'S HISTORY AND THE VIRGIN MARKS

14. The Virgin Group was founded in 1970 as a mail order record retailer by British entrepreneur Sir Richard Branson. As used today by the Virgin Group, the VIRGIN Mark is one of the most highly recognized trademarks in the United States and throughout the world. Unlike many other famous brands that are limited to a particular industry, the reputation of the Virgin Group is not limited to any particular area or activity. The Virgin Group is a dynamic conglomerate of companies and business units that actively develop new products and services with an ever-growing range of branded goods and services, ranging from airline transportation to mobile telephony, space travel, entertainment, hospitality, and restaurant and bar services, to name a few. Substantial goodwill and national reputation has accrued to the VIRGIN Mark as a result of continuous sales, promotion, and advertising of products and services bearing the VIRGIN Mark over many years.

15. Commencing at a time long prior to Defendant's adoption and use of the VIRGIN VAPOR Mark, the Virgin Group has operated numerous United States and worldwide businesses under the trade name, trademark, and service mark VIRGIN. A description of the Virgin Group's operations appears at the Internet website associated with the domain name www.virgin.com. The Virgin Group companies employ tens of

thousands of people in 35 countries, serve millions of customers worldwide, have 96% brand recognition in the United States, and have global revenues in the billions of U.S. dollars.

16. Commencing at a time long prior to Defendant's adoption and use of the VIRGIN VAPOR Mark, VEL has used the VIRGIN Mark on and in association with the retail sale and distribution of a broad range of goods and services, including, but not limited to, wine, vodka, soft drinks, coffee, water, other non-alcoholic beverages, restaurant, café, and hospitality services, mobile phone and telecommunications products and services, environmental, financial, and health-related services, airline and travel-related services, apparel, toys, books, bags, records, CDs, videos, cosmetics, consumer electronics, and online information and entertainment services.

17. As a result of its long-standing, nationwide, and widespread use, Virgin owns extensive common law rights in the VIRGIN Marks in connection with a wide variety of wine, beverage, hospitality, retail, leisure, travel, transportation, entertainment, media, telecommunications, publishing, health, wellness, financial, aviation, philanthropic, digital information technology, recreational, gaming, and environmental services, and all associated goods and services rendered therewith, including wine, other alcoholic and non-alcoholic beverages, water, and restaurant, bar, and hospitality services. Virgin promotes and sells these goods under the VIRGIN Mark throughout the United States and on its website www.virgin.com, where the VIRGIN Marks are prominently displayed.

18. Virgin's licensee, Virgin Wines, has provided VIRGIN-branded wine products in United States commerce continuously since 2010. A description of Virgin

Wines operations appears at the website associated with the domain name www.virginwines.com.

19. Virgin's licensee, Virgin Atlantic Airways Ltd. ("Virgin Atlantic" or "VAA"), has provided VIRGIN and VIRGIN ATLANTIC-branded air travel, air freight, courier, cargo, and related services in U.S. commerce continuously since 1984. A description of VAA operations appears at the website associated with the domain name www.virgin-atlantic.com. VAA operates a fleet of Boeing 747 and Airbus A300 and A340 aircrafts providing daily departures to and from Atlanta, Austin, Boston, Buffalo, Charleston, Charlotte, Chicago, Cincinnati, Cleveland, Columbus, Dallas, Denver, Detroit, Fort Lauderdale, Honolulu, Indianapolis, Jacksonville, Kahului, Kansas City, Kona, Las Vegas, Los Angeles, Louisville, Memphis, Miami, Milwaukee, Minneapolis, Nashville, New Orleans, New York, Norfolk, Oakland, Orlando, Philadelphia, Phoenix, Pittsburgh, Portland, Raleigh-Durham, Richmond, Rochester, Sacramento, Salt Lake City, San Antonio, San Diego, San Francisco, Seattle, St. Louis, Tampa, and Washington D.C. The airports in New York (JFK), Washington, Boston, and Los Angeles offer Virgin Atlantic Clubhouses, which provide restaurant, bar, and café services, including offering beer, wine, other alcoholic beverages, non-alcoholic beverages, and food. VAA flights also offer beer, wine, other alcoholic beverages, non-alcoholic beverages, and food to passengers. In addition, VAA's Retail Therapy program offers customers the option to purchase a variety of merchandise to be delivered in-flight including, cigarettes, alcohol, candy, jewelry, fragrances, scarves and sunglasses, to name a few.

20. Virgin's licensee, Virgin America Inc. ("Virgin America" or "VAI"), has provided VIRGIN-branded air travel and related services in U.S. commerce continuously since August 2007. A description of VAI operations appears at the website associated with the domain name www.virginamerica.com. VAI operates commercial aircrafts providing daily departures to and from Austin, Boston, Chicago, Dallas, Denver, Fort Lauderdale, Honolulu, Maui, Las Vegas, Los Angeles, New York City (JFK and LGA), Newark, Orlando, Palm Springs (seasonal), Portland, San Diego, San Francisco, Seattle, Washington D.C. (IAD and DCA), Puerto Vallarta, Los Cabos, and Cancun. The airport in Los Angeles also offers a Virgin America lounge, which provides restaurant, bar, and hospitality services, and café services, including offering beer, wine, other alcoholic beverages, non-alcoholic beverages, and food. VAI also has an exclusive terminal in San Francisco. VAI flights offer beer, wine, other alcoholic beverages, non-alcoholic beverages, and food to passengers, as well. In addition, VAI offers its customers diverse merchandise through its Elevate Fly Store, including electronic cigarettes, electronic cigarette accessories, tobacco pipes, beer dispensers, homebrew kits, beer glassware, wine, cookware, electronics, accessories, gift cards, sports equipment, furniture, travel products, jewelry, fragrances, and watches, to name a few.

21. Virgin's licensee, Virgin Australia International ("Virgin Australia International" or "VAU") has provided VIRGIN-branded air travel and related services in U.S. commerce continuously since February 2009. A description of VAU operations appears at the website associated with the domain name www.virginaustralia.com. VAU operates commercial aircrafts providing departures to and from Aspen, Atlanta,

Baltimore, Boston, Chicago, Cincinnati, Colorado Springs, Columbus, Dallas, Denver, Detroit, Fort Lauderdale, Honolulu, Houston, Indianapolis, Kahului, Kauai Island, Kona, Las Vegas, Los Angeles, Memphis, Miami, Minneapolis, New Orleans, New York, Orlando, Philadelphia, Phoenix, Portland, Salt Lake City, San Francisco, Seattle, Spokane, Tampa, and Washington D.C. In addition, VAU provides reciprocal access to VAI lounges, including bar and restaurant services, to its passengers traveling through Los Angeles.

22. Virgin's licensee, Virgin Galactic ("Virgin Galactic" or "VG"), founded in 2004, is the world's first space line, which will own and operate its privately built spaceships based on the remarkable, history-making Spaceship One. A description of VG operations appears at the website associated with the domain name www.virgingalactic.com.

23. Virgin's licensee, Virgin Limited Edition ("VLE"), is Sir Richard's collection of retreats and luxury hotels under the portfolio of Virgin Hotels Group Limited, with each resort providing restaurant services. A description of VLE's operations appears at the website associated with the domain name www.virginlimitededition.com.

24. Virgin's licensee, Virgin Hotels ("Virgin Hotels" or "VH"), has offered hotel, restaurant, and spa services in U.S. commerce under the VIRGIN Marks since January 2015. A description of VH's operations appears at the website associated with the domain name www.virginhotels.com. In addition, VH sells apparel, travel accessories, furniture, bedding, skin care products, and coffee makers through its Virgin Hotels at Home Store.

25. Virgin's licensee, Virgin Vacations ("Virgin Vacations" or "VV"), has provided VIRGIN-branded travel and tour services in United States commerce continuously since 1994, including car rental services and vacation packages in the United States and abroad. A description of VV's operations appears at the website associated with the domain name www.virgin-vacations.com.

26. Virgin's licensee, Virgin Holidays ("Virgin Holidays"), has provided VIRGIN-branded travel and tour services in United States commerce since 1985. A description of Virgin Holidays' operations appears at the website associated with the domain name www.virginholidays.com.

27. Virgin's licensee, Virgin Mobile USA, LLC ("Virgin Mobile" or "VMU"), has offered VIRGIN-branded wireless telecommunications products and services in U.S. commerce continuously since June 2002. VMU currently provides wireless services throughout the United States and operates tens of thousands of retail stores. A description of VMU's operations appears at the website associated with the domain name www.virginmobileusa.com.

28. Virgin's licensee, Virgin Money Giving ("VMG"), created as a not-for-profit business by Virgin Money in October 2009, is a website and charitable service designed to help users raise money online for charities. A description of VMG's operations appears at the website associated with the domain name www.virginmoneygiving.com.

29. Virgin's licensee, Virgin Earth Challenge ("Virgin Earth Challenge" or "VEC"), launched in 2007, is a competition with a prize of \$25 million dollars for whoever can demonstrate to the judges' satisfaction a commercially-viable design resulting in the removal of anthropogenic, atmospheric greenhouse gases, which will materially

contribute to the stability of the Earth's climate. A description of VEC's operations appears at the website associated with the domain name www.virginearth.com.

30. Virgin's licensee, Virgin Unite ("VU"), founded in 2005, is the non-profit foundation of the Virgin Group. VU addresses social and environmental problems by helping the way businesses and the social sector work together. The Virgin Group covers all of VU's overhead costs, meaning that 100% of donations received go directly to frontline charitable initiatives. A description of VU's operations appears at the website associated with the domain name www.virgin.com/unite/.

31. Virgin's licensee, Virgin Pulse, Inc., formerly Virgin Healthmiles, ("Virgin Pulse" or "VPI"), has provided VIRGIN-branded health-related services in the United States since 2005. A description of VPI's operations appears at the website associated with the domain name www.virginpulse.com.

32. Virgin's licensee, Virgin Produced ("Virgin Produced" or "VP"), is a film and television development, packaging, and production company announced in 2010 by the Virgin Group. A description of VP's operations appears at the website associated with the domain name www.virginproduced.com.

33. Virgin's licensee, Virgin Casinos, formerly Virgin Games, ("Virgin Casinos" or "VC"), introduced in 2010, is a premier destination for competitive console gamers to meet and play against each other. A description of VC's operations appears at the website associated with the domain name www.virgincasinos.com.

34. Virgin's licensee, Virgin Racing Formula E Team ("Virgin Racing" or "VFR"), founded in 2013, is a motor racing team which competes in the electric racing series, FIA Formula E Championship. VFR hosts racing events and sells merchandise

and apparel associated with Formula E racing. A summary of VR's operations appears at the website associated with the domain name <https://www.ds-virginracing.com/>.

35. Virgin's licensee, Virgin Cruises ("Virgin Cruises" or "VCR"), established in December 2014, is a cruise line that will offer a variety of cruise ship services. A brief description of VCR's future operations appears at the website associated with the domain name www.virgincruises.com.

36. Virgin's licensee, Virgin Sport ("Virgin Sport" or "VS"), introduced in May 2015, is an active lifestyle company that will run participatory fitness events and programs. A brief introduction to VS appears at the website associated with the domain name www.virginsport.com.

37. VEL's operations extend worldwide. Customers purchase goods and services identified by the VIRGIN Marks every day throughout the United States, including in Illinois and this District.

38. Over the years, VEL has adopted and used a family of registered and common law marks that all include the famous "VIRGIN" brand and together comprise the VIRGIN Marks. In addition to its strong common law rights in the VIRGIN Marks, VEL is the owner of the following United States trademark registrations for the following VIRGIN Marks, all of which are legally and validly registered on the Principal Register of the United States Patent and Trademark Office ("United States Trademark Registrations"):

- 1) U.S. Registration No. 1,039,574 for VIRGIN (stylized) for "Sound records in the form of discs and tapes and cassettes for use therewith;"
- 2) U.S. Registration No. 1,413,664 for VIRGIN for "Air travel services;"

- 3) U.S. Registration No. 1,469,618 for VIRGIN for "Pre-recorded audio and/or video tapes, cassettes and cartridges; pre-recorded audio and video discs, phonograph records;"
- 4) U.S. Registration No. 1,517,801 for VIRGIN (stylized) for "Pre-recorded audio and video discs, phonograph records; photographic and cinematographic films;"
- 5) U.S. Registration No. 1,591,952 for VIRGIN (stylized) for "Printed sheet music; fictional and non-fictional books, biography and autobiography books, periodicals, namely, paperback books all dealing with music, films and entertainment; paper for packaging, paper cases; writing instruments, namely, pens, pencils, ball point pens, stationery and office supplies, namely, writing and note paper, playing cards" and "articles of outer clothing, namely, shirts, t-shirts, sweat shirts, jackets, hats, clothing caps, clothing belts;"
- 6) U.S. Registration No. 1,597,386 for VIRGIN for "Fictional and non-fictional books, biography and autobiography books, periodicals, namely, journals, paperback books all dealing with music, films and entertainment; stationery and office supplies, playing cards" and "articles of outer clothing, namely, shirts, t-shirts, sweat shirts, jackets, hats, clothing caps;"
- 7) U.S. Registration No. 1,851,817 for VIRGIN for "Transportation of goods and passengers by road and air, freight transportation services; travel agency services" and "bars; retail store services in the fields of cameras, records, audio and video tapes, computers and electronic apparatus, and watches, sheet music, books and photography, handbags, purses, luggage and leather goods, clothing, games, video game;"
- 8) U.S. Registration No. 1,852,776 for VIRGIN (stylized) for "Transportation of goods and passengers by road, air freight transportation services" and "bars; rental of food service equipment; namely, vending machines; portrait and aerial photography; typesetting and printing services; and retail store services in the fields of cameras, records, audio and video tapes, computers and electronic apparatus; and watches; sheet music, books and photography; handbags, purses, luggage and leather goods; clothing; games, video game machines;"
- 9) U.S. Registration No. 2,151,589 for VIRGIN VODKA for "Vodka;"
- 10) U.S. Registration No. 2,237,092 for VIRGIN VACATIONS for "Arranging the transport of passengers by air and road, arranging and conducting travel tours, travel agency services, namely, making reservations and bookings for transportation, and transportation reservation services" and

"resort hotel and hotel reservation; travel agency services, namely, making reservations and bookings for temporary lodging;"

- 11) U.S. Registration No. 2,586,162 for VIRGIN for "Articles of luggage, namely, suitcases; bags; namely, back packs, rucksacks, school bags, school satchels, traveling bags, sports bags, all-purpose sports bags for campers and climbers, textile shopping bags; wallets;"
- 12) U.S. Registration No. 2,625,455 for VIRGIN for "Providing an on-line shopping mall via a global computer network; providing business information via a global computer network" and "computerized communication services, namely, electronic mail services, and providing networks for the purpose of transmission and reception of electronic mail, computer generated music, news and other data and information; and broadcasting services by radio and over a global computer network of a wide variety of programs, namely, current events, economics, politics, sports, entertainment, the arts and business;"
- 13) U.S. Registration No. 2,639,079 for VIRGIN HOLIDAYS for "Transportation of passengers and goods by road, rail and air; arranging of package holidays; arranging and organizing tours; arranging visits to places of interest; tourist office services; travel agency services, namely, making reservations and bookings for transportation; transportation reservation services" and "travel agency services, namely, making reservations and bookings for temporary lodging;"
- 14) U.S. Registration No. 2,689,097 for VIRGIN (stylized) for "Mobile telephones; telephones; modems; batteries; battery chargers; cigarette lighter adapters; dashboard mounts; hands-free headsets; carrying cases; belt clips" and "telecommunications services, namely, transmission of voice, data, images, audio, video, and information via telephone or the internet; personal communications services; pager services; electronic mail services; transmission or broadcast of news and information for others via telephone, including the internet;"
- 15) U.S. Registration No. 2,689,098 for VIRGIN for "Mobile telephones; telephones; modems; batteries; battery chargers; cigarette lighter adapters; dashboard mounts; hands-free headsets; carrying cases; belt clips" and "telecommunications services, namely, transmission of voice, data, images, audio, video, and information via telephone or the internet; personal communications services; pager services; electronic mail services; transmission or broadcast of news and information for others via telephone, including the internet;"
- 16) U.S. Registration No. 2,709,578 for VIRGIN (stylized) for "Sound records in the form of discs; pre-recorded audio and video discs, phonograph

records featuring music; graphical interface to aid the delivery of interactive products and services by cable or wireless transmission; parts for the aforesaid goods; computer game software," and "water, namely, mineral waters, aerated waters and flavored waters; non-alcoholic beverages, namely, fruit flavored drinks;

17) U.S. Registration No. 2,717,644 for VIRGIN for "Non-alcoholic beverages, namely, soft drinks;"

18) U.S. Registration No. 2,770,775 for VIRGIN MOBILE for "Mobile telephones, telephones and modems, and accessories therefor, namely, batteries; battery chargers; cigarette lighter adapters; hands-free headsets; carrying cases and belt clips," "providing directory information via telephone," and "telecommunications services, namely, transmission of voice, data, images, audio, video, and information via telephone or the internet; personal communications services; pager services; electronic mail services; transmission or broadcast of news and information for others via telephone, including the internet;"

19) U.S. Registration No. 2,770,776 for VIRGIN MOBILE (stylized) for "Mobile telephones, telephones and modems, and accessories therefor, namely, batteries; battery chargers; cigarette lighter adapters; hands-free headsets; carrying cases and belt clips," "providing directory information via telephone," and "telecommunications services, namely, transmission of voice, data, images, audio, video, and information via telephone or the internet; personal communications services; pager services; electronic mail services; transmission or broadcast of news and information for others via telephone, including the internet;"

20) U.S. Registration No. 2,798,130 for VIRGIN (stylized) for "Playing cards, writing instruments, namely, pens, pencils and ball point pens," "leisurewear, namely, fleece tops and shirts; articles of outer clothing, namely t-shirts, sweat shirts, jackets, hats, clothing caps," "preparing advertising, promotions, and public relations materials for others; demonstration of the goods of others and the promotion thereof; and distribution and dissemination of advertising, promotional materials and sample materials of others," "electronic transmission and display of information for business or domestic purposes from a computer stored data bank," and "retail store services in the fields of records, audio and video tapes, computers and electronic apparatus and watches, books, luggage and leather goods, clothing, games, video game cartridges, and cafes;"

21) U.S. Registration No. 2,808,270 for VIRGIN ATLANTIC for "Transportation of and arranging transportation of goods and passengers by road and air; freight transportation services by air; transportation of human beings by

means of land vehicles; chauffeur services; travel agency services, namely, making reservations and bookings for transportation; arranging and/or conducting travel tours; operation of aircraft for others;"

- 22) U.S. Registration No. 3,174,388 for VIRGIN for "Soaps; shampoos; non-medicated toilet preparations, namely, soaps, shampoos, lotions, and moisturizers; antiperspirants; deodorants for use on the person; cosmetics, namely, foundation creams and lotions; non-medicated preparations for the care of the skin, hands, scalp and body, namely, moisturizers, lotions, creams, soaps, gels; hair care preparations, namely, shampoos; non-medicated skin cleansing preparations, namely, cleansers, lotions, creams, soaps; creams and lotions for the skin;"
- 23) U.S. Registration No. 3,188,282 for VIRGIN for "Alcoholic beverages, namely, wine;"
- 24) U.S. Registration No. 3,209,714 for VIRGIN (stylized) for "Entertainment services, namely, providing online computer games;"
- 25) U.S. Registration No. 3,209,716 for VIRGIN for "Entertainment services, namely, providing online computer games;"
- 26) U.S. Registration No. 3,230,095 for VIRGIN (stylized) for "Organizing cultural activities and events; operation of leisure centers, namely, providing library and Internet access facilities;"
- 27) U.S. Registration No. 3,245,593 for VIRGIN (stylized) for "Alcoholic beverages, namely, wine;"
- 28) U.S. Registration No. 3,298,420 for VIRGIN for "Business incentive services, namely, offering plans to employers including motivational schemes, gift certificates and other rewards for employees, management of incentive programs, events and schemes for others" and "debit card services;"
- 29) U.S. Registration No. 3,298,421 for VIRGIN (stylized) for "Business incentive services, namely, offering plans to employers including motivational schemes, gift certificates and other rewards for employees, management of incentive programs, events and schemes for others" and "debit card services;"
- 30) U.S. Registration No. 3,398,247 for VIRGIN for "Banking services; loan services, namely, offering loans to others; credit card services; consumer financing; electronic funds transfer;"

- 31) U.S. Registration No. 3,398,248 for VIRGIN (stylized) for "Banking services; loan services, namely, offering loans to others; credit card services; consumer financing; electronic funds transfer;"
- 32) U.S. Registration No. 3,427,241 for VIRGIN for "Organizing sporting and cultural activities and events; operation of leisure centers, namely, providing library facilities" and "operation of leisure centers, namely, providing cosmetic and body care services;"
- 33) U.S. Registration No. 3,472,228 for VIRGIN UNITE for "Developing promotional campaigns for business; promoting public awareness of the need for businesses to have a positive impact on the communities and environment in which they operate and work together with the social sector to drive long term social change including making investments in emerging markets to accelerate positive social change through economic development; charitable services, namely, organizing and coordinating programs for the sick, people with health problems or issues, the homeless, drug users, those with disabilities, victims of abuse, those who are bereaved, children in need or at risk, those with sexual problems, and underprivileged communities, and organizing and conducting volunteer programs and community service projects; business management and administration services in connection with a charity," "charitable fund raising; charitable financial services for those in need, namely, accepting and administering monetary charitable contributions; financial sponsorship of fund raising events and events designed to raise the profile of charitable and social issues," and "educational services, namely, conducting summits, conferences, lectures and seminars in the field of social change and charitable and social issues; training services in the field of social change and charitable and social issues; organizing community sporting and cultural events; educational services, namely, providing classes, lectures, seminars, workshops, and discussion groups in the fields of sickness, health problems, homelessness, drug use, disabilities, abuse, bereavement, children's needs, sexual problems, and poverty to young people, people with health problems or issues, the homeless, drug users, those with disabilities, victims of abuse, those who have been bereaved, children in need or at risk, those with sexual problems, and underprivileged communities; charitable services, namely, academic mentoring of children from underprivileged communities and young people;"
- 34) U.S. Registration No. 3,535,624 for VIRGIN GALACTIC (stylized) for "Travel agency services, namely, making reservations and bookings for transportation, space travel agency services; namely, booking of transportation into space;"

- 35) U.S. Registration No. 3,538,901 for VIRGIN (stylized) for "Arranging and conducting live musical performances and music festivals;"
- 36) U.S. Registration No. 3,541,731 for VIRGIN AMERICA for "Air transportation; freight transportation services by means of air, ship, truck, and rail; airport passenger and baggage check-in services; airport services, namely, ticketing and boarding services; travel services, namely, booking seating arrangements for airline passengers; air transportation services featuring frequent flyer miles as a bonus program for frequent air travelers; providing flight arrival and departure information; and transportation reservation services" and "onboard in-flight entertainment services, namely, distributing movies, TV programs, and audio programs, and providing temporary use of video games, software and personal monitors for viewing the same;"
- 37) U.S. Registration No. 3,913,150 for VIRGIN (stylized) for "Management of incentive and loyalty programs of others to promote healthy lifestyle choices," "medical evaluation services, namely, providing health assessments; advisory services relating to health; consultation relating to health care," and "personal lifestyle counseling and consultation;"
- 38) U.S. Registration No. 3,913,151 for VIRGIN (stylized) for "Management of incentive and loyalty programs of others to promote healthy lifestyle choices," "medical evaluation services, namely, providing health assessments; advisory services relating to health; consultation relating to health care," and "personal lifestyle counseling and consultation;"
- 39) U.S. Registration No. 4,004,271 for VIRGIN MONEY EVERYONE'S BETTER OFF for "Insurance services, namely, brokerage, underwriting, administration, appraisals, and claims adjustment in the fields of life insurance, car insurance, home insurance, pet insurance, and travel insurance; financial affairs and monetary affairs, namely, financial information, management and analysis services; real estate affairs, namely, mortgage lending; banking services; financial clearing houses; credit card services; debit card services; mortgage banking; financial consultancy; provision of financial information; financial evaluation for insurance purposes; electronic funds transfer; financial services, namely, money lending; financial services, namely, investment management and investment of funds for others;"
- 40) U.S. Registration No. 4,105,375 for VIRGIN (stylized) for "Operation of fitness centers; health club services;"
- 41) U.S. Registration No. 4,176,062 for VIRGIN for "Advisory and consultancy services related to resource efficiency, energy usage management and energy efficiency," "creation, management and administration of

investment funds, venture capital funds and private equity funds, fund investment services, including fund investment services and fund investment management services in the renewable energy, resource efficiency, energy efficiency, clean technology and alternative energy sectors; advisory and consultancy services in relation to the aforesaid and in relation to the evaluation, consummation, administration and management of investments in businesses operating in the renewable energy, resource efficiency, energy efficiency, clean technology and alternative energy sectors,” and “advisory and consultancy services relating to the design and development of renewable energy sources and related to energy measurement to improve energy efficiency;”

42) U.S. Registration No. 4,220,791 for VIRGIN (stylized) for “Provision of exercise facilities; organization, operation and supervision of incentivized fitness programs and information advisory services relating to aforesaid services,” “operation of leisure centers, namely, providing cosmetic and body care services; beauty salons; Turkish bath services; hairdressing, manicure and pedicure services; consultancy in the field of beauty, body and skincare, make up and dress; massage; physical therapy; sun tanning salons; provision of sauna facilities; aromatherapy services; reflexology services; medical services, namely, chiropody services; health assessments and health care risk assessments, namely, providing a heart-rate based overview of their own metabolism in order to assist in reaching weight loss, sports performance, health, fitness, and wellness related goals; health spa services in the nature of providing steam room facilities; organization, operation and supervision of incentivized health programs and information advisory services relating to all aforesaid services,” and “lifestyle counseling and consultancy;”

43) U.S. Registration No. 4,270,403 for VIRGIN RADIO (stylized) for “Apparatus for recording, transmission or reproduction of sound or images; pre-recorded digital media featuring radio, music, blogs, podcasts, DJs, pictures, videos, movies and television in the fields of music, entertainment and news; software downloadable from the Internet for viewing and listening to radio, music, blogs, podcasts, DJs, pictures, videos, movies and television; compact discs featuring music; downloadable digital music; radios; portable radios; digital radios; earphones for radios; radio broadcasting sets, namely, transmitting and receiving apparatus for radio broadcasting; mobile radio broadcasting units, namely, transmitting and receiving apparatus for radio broadcasting; mobile radios; music centers incorporating radio and television receivers, namely, entertainment system comprising multiple image display screens and multiple input devices; radiotelephones; audio and video recordings featuring radio, music, movies, television, podcasts, videos, pictures and DJs in the fields of music, entertainment and news; electronic media for storing, transmitting and reproducing music, sounds, images and text,

namely, radio, music, movies, television, podcasts, videos and pictures; musical recordings; downloadable electronic data files in the nature of radio programs, music, movies, television, podcasts and videos; radio programs, music, videos, sound, images, text and data downloadable from the Internet or other computer networks in the field of music, entertainment and news; MP3 players; computer e-commerce software to allow users to safely place orders and make payments in the field of electronic business transactions via a global computer network or telecommunications network; downloadable software in the nature of mobile applications in the fields of music, entertainment and news,” “telecommunications and communication services, namely, transmission of voice, data, graphics, sound and video by means of broadband, digital or wireless networks; broadband radio communications services; radio broadcasting; broadcasting services, namely, radio, television, satellite and Internet broadcasting services; digital radio broadcasting services; radio broadcasting over the Internet and other communication networks; streaming of radio programs and audio material on the Internet; news agency services for electronic transmission; delivery of digital music by telecommunications,” and “entertainment services, namely, providing on-going radio, television and Internet programs in the field of music, entertainment and news; entertainment services, namely, providing podcasts in the field of music, entertainment and news; entertainment services, namely, providing blogs featuring music, entertainment and news; entertainment services, namely, providing a web site featuring photographic, audio and video material featuring music, entertainment and news; sporting and cultural activities, namely, competitions in the field of music, entertainment and news; entertainment by means of radio and television, namely, ongoing radio and television programming in the field of music, entertainment and news; production, distribution, presentation, syndication, and rental of material with a visual and/or audio element, namely, television and radio programs, films, sound and video recordings, and news programs; entertainment services, namely, presentation of interactive entertainment shows, live shows, stage plays, exhibitions and concerts; recording studio services and the provision of recording studio facilities; audio recording services; provision and rental of radio and television studios and broadcasting facilities; providing interactive information relating to education, entertainment, sporting and cultural activities, radio and television broadcasting and radio and television entertainment provided on-line from computer data bases or from facilities provided on the Internet; provision of information relating to education, entertainment, sporting and cultural activities, radio and television broadcasting and radio and television entertainment for accessing via communication and computer networks; publishing of music; consultancy, information and advisory services all relating to the aforesaid services, namely, radio, television and Internet programming consultancy, information and advisory services;

- 44) U.S. Registration No. 4,291,919 for VIRGIN (stylized) for “Drinking water; non-alcoholic beverages, namely, soft drinks;”
- 45) U.S. Registration No. 4,291,920 for VIRGIN for “Drinking water; non-alcoholic beverages, namely, soft drinks;”
- 46) U.S. Registration No. 4,325,986 for VIRGIN for “Watches,” “arranging the offer and sale of carbon offset credits; online retail store services featuring apparel, accessories, fragrances, watches, jewelry, sunglasses, electronics, cases for electronic products, gift cards, toys, model airplanes, liquor, cosmetics, luggage, bags, pet products, furniture, cookware, coffee makers, golf equipment, wall art, key rings,” and “creation, management and administration of investment funds, venture capital funds and private equity funds; charitable fundraising; credit card services;”
- 47) U.S. Registration No. 4,398,320 for VIRGIN for “Apparatus for recording, transmitting, storing or reproducing sound or images; blank magnetic data carriers; blank digital storage media for sound or video recordings; pre-recorded electronic and digital media featuring radio, music, blogs, podcasts, DJs, pictures, videos, books, movies and television; computer software for use in personal computers, computer game consoles and consumer electronics products for use in the transmission, reception and storage of data, images and digital information in the fields of radio programs, music, movies, books, television, podcasts, videos, games of skill and games of chance; software downloadable from the Internet for transmission, reception and storage of voice, data, images, e-mail and digital information; compact discs featuring music; radios; earphones for radios; radio broadcasting sets, namely, transmitting and receiving apparatus for radio broadcasting; mobile radio broadcasting units, namely, transmitting and receiving apparatus for radio broadcasting; integrated audio and video apparatus incorporating radio and television receivers; radiotelephones; sound recordings, namely, musical recordings and video recordings featuring radio, music, blogs, podcasts, DJs, videos, books, movies and television; downloadable electronic publications in the nature of books, magazines, articles, brochures in the field of radio programs, music, movies, books, television, podcasts and video; radio programs, music, videos, sound, images, text and data downloadable from the Internet or other computer networks; communications and telecommunications devices, namely, computers, wireless telephones and satellite telephones; mobile telecommunications apparatus and equipment, namely, batteries, battery chargers, power supplies, charger adapters, phone clips, phone covers, phone cases, ear phones, headphones, receivers, microphones, car kits for the adaptation of portable communication apparatus and instruments for vehicular use, antennas, antenna adapters, cables, hands free microphones, phone

holders, car chargers, data cables, electrical wires and handsets; GPS receivers; keyboards, digital pens, memory cards, digital maps and digital map displays in the form of satellite navigational systems; mobile digital devices, namely, MP3 players, mobile telephones, smart phones, digital cameras and personal digital assistants; accessories and replacement parts for mobile phones, mobile digital devices, smart phones, digital cameras and computers, namely, batteries, battery chargers, cigarette lighter adapters, belt clips, carrying cases, headphones, headsets, speakers and mouse mats; cameras; computer e-commerce software to allow users to safely place orders and make payments in the field of electronic business transactions via a global computer network or telecommunications network; computer software and devices for navigation; downloadable software in the nature of a mobile application for transmission, reception and storage of voice, data, images, e-mail and digital information; systems and apparatus for electric money transactions, namely, blank smart cards and smart card readers; calculators; software for use in the secure identification, storage, transmission and retrieval of data; software relating to identity verification and fraud prevention; electronic encryption devices to enable secure storage, retrieval and transmission of confidential customer information used by individuals, banking and financial institutions; computer software for use in connection with accessing and conducting electronic banking and financial services via global computer networks and telecommunication networks; computer software for providing an online financial platform; computer software for the provision of financial trading services, securities exchange services, automated methods of crossing financial orders and electronic financial and crossing exchanges; magnetically encoded credit cards, debit cards, cash cards and cheque guarantee cards,” “Retail store services featuring telecommunication apparatus, devices and accessories; on-line retail store services featuring telecommunication apparatus, devices and accessories,” “Insurance brokerage; financial and monetary affairs, namely, financial information, management, planning and analysis services; real estate brokerage; banking; stockbroking; providing cash and other rebates for credit card use as part of a customer loyalty program; provision of electronic payment services including electronic fund transfer services, electronic processing and subsequent transmission of bill payment data and on-line transaction facilities; loyalty program payment processing services; automated bill payment of accounts; collection of debts; insurance services provided over the Internet or any other electronic network, namely, insurance brokerage, insurance consultancy and insurance indemnity; discount services, namely, financing of loans and discount of bills; personal equity plans, namely, equity capital investment; provision of investment and fund management information; administration of funds and investments; stock, shares and bond information and brokerage services; credit and debit card services; financial administration and management of employee pension plans;

pension planning and investment consulting services; mutual funds management; financing of loans and mortgage lending; trust services, namely, investment trust company services; information, consultancy and advisory services relating to the aforesaid financial, insurance and real estate services; information, consultancy and advisory services relating to the aforesaid financial, insurance and real estate services provided on-line from a computer database or the Internet; information, consultancy and advisory services in relation to the aforesaid services provided over a telecommunications network,” “Telecommunications and communication services, namely, transmission of voice, data, graphics, images, audio and video by means of telecommunications networks, wireless communication networks and the Internet; digital network telecommunications services; providing Internet chat rooms for transmission of messages among computer users concerning radio, music, blogs, podcasts, DJs, pictures, videos, books, games, movies and television; portal services for providing users access to a communications or computer network; providing e-mail services; radio and television broadcasting services; Internet broadcasting services; news agency services for electronic transmission; text and voice messaging services; consultancy, information and advisory services relating to the aforesaid telecommunications and communication services,” and “Education, namely, conducting classes, seminars, conferences and workshops in the fields of entrepreneurship, transportation, telecommunications, hospitality and entertainment; providing training in the fields of entrepreneurship, transportation, telecommunications, hospitality and entertainment; entertainment services, namely, radio, television and Internet programs, blogs and podcasts in the fields of music, entertainment and news; organizing community sporting and cultural activities; production, distribution, presentation, syndication, networking and rental of sound and video recordings including television and radio programs, films and news programs; interactive entertainment, namely, presentation of live show performances, stage plays and music; concerts; recording studio services and the provision of recording studio facilities; audio recording services; provision and rental of radio and television studios and broadcasting facilities; interactive information relating to education, entertainment, sporting and cultural activities, and radio and television entertainment provided on-line from computer databases or from facilities provided on the Internet; publication services, namely, book publication services; consultancy, information and advisory services all relating to the aforesaid educational and entertainment services;”

- 48) U.S. Registration No. 4,416,519 for VIRGIN (stylized) for “Apparatus for recording, transmitting, storing or reproducing sound or images; blank magnetic data carriers; blank digital storage media for sound or video recordings; pre-recorded electronic and digital media featuring radio, music, blogs, podcasts, DJs, pictures, videos, books, movies and

television; computer software for use in personal computers, computer game consoles and consumer electronics products for use in the transmission, reception and storage of data, images and digital information in the fields of radio programs, music, movies, books, television, podcasts, videos, games of skill and games of chance; software downloadable from the Internet for transmission, reception and storage of voice, data, images, e-mail and digital information; compact discs featuring music; radios; earphones for radios; radio broadcasting sets, namely, transmitting and receiving apparatus for radio broadcasting; mobile radio broadcasting units, namely, transmitting and receiving apparatus for radio broadcasting; integrated audio and video apparatus incorporating radio and television receivers; radiotelephones; sound recordings, namely, musical recordings and video recordings featuring radio, music, blogs, podcasts, DJs, videos, books, movies and television; downloadable electronic publications in the nature of books, magazines, articles, brochures in the field of radio programs, music, movies, books, television, podcasts and video; radio programs, music, videos, sound, images, text and data downloadable from the Internet or other computer networks; communications and telecommunications devices, namely, computers, wireless telephones and satellite telephones; mobile telecommunications apparatus and equipment, namely, batteries, battery chargers, power supplies, charger adapters, phone clips, phone covers, phone cases, ear phones, headphones, receivers, microphones, car kits for the adaptation of portable communication apparatus and instruments for vehicular use, antennas, antenna adapters, cables, hands free microphones, phone holders, car chargers, data cables, electrical wires and handsets; GPS receivers; keyboards, digital pens, memory cards, digital maps and digital map displays in the form of satellite navigational systems; mobile digital devices, namely, MP3 players, mobile telephones, smart phones, digital cameras and personal digital assistants; accessories and replacement parts for mobile phones, mobile digital devices, smart phones, digital cameras and computers, namely, batteries, battery chargers, cigarette lighter adapters, belt clips, carrying cases, headphones, headsets, speakers and mouse mats; cameras; computer e-commerce software to allow users to safely place orders and make payments in the field of electronic business transactions via a global computer network or telecommunications network; computer software and devices for navigation; downloadable software in the nature of a mobile application for transmission, reception and storage of voice, data, images, e-mail and digital information; systems and apparatus for electric money transactions, namely, blank smart cards and smart card readers; calculators; software for use in the secure identification, storage, transmission and retrieval of data; software relating to identity verification and fraud prevention; electronic encryption devices to enable secure storage, retrieval and transmission of confidential customer information used by individuals, banking and financial institutions; computer software

for use in connection with accessing and conducting electronic banking and financial services via global computer networks and telecommunication networks; computer software for providing an online financial platform; computer software for the provision of financial trading services, securities exchange services, automated methods of crossing financial orders and electronic financial and crossing exchanges; magnetically encoded credit cards, debit cards, cash cards and cheque guarantee cards,” “retail store services featuring telecommunication apparatus, devices and accessories; on-line retail store services featuring telecommunication apparatus, devices and accessories,” “Insurance brokerage; financial and monetary affairs, namely, financial information, management, planning and analysis services; real estate brokerage; banking; stockbroking; providing cash and other rebates for credit card use as part of a customer loyalty program; provision of electronic payment services including electronic fund transfer services, electronic processing and subsequent transmission of bill payment data and on-line transaction facilities; loyalty program payment processing services; automated bill payment of accounts; collection of debts; insurance services provided over the Internet or any other electronic network, namely, insurance brokerage, insurance consultancy and insurance indemnity; discount services, namely, financing of loans and discount of bills; personal equity plans, namely, equity capital investment; provision of investment and fund management information; administration of funds and investments; stock, shares and bond information and brokerage services; credit and debit card services; financial administration and management of employee pension plans; pension planning and investment consulting services; mutual funds management; financing of loans and mortgage lending; trust services, namely, investment trust company services; information, consultancy and advisory services relating to the aforesaid financial, insurance and real estate services; information, consultancy and advisory services relating to the aforesaid financial, insurance and real estate services provided on-line from a computer database or the Internet; information, consultancy and advisory services in relation to the aforesaid services provided over a telecommunications network,” “telecommunications and communication services, namely, transmission of voice, data, graphics, images, audio and video by means of telecommunications networks, wireless communication networks and the Internet; digital network telecommunications services; providing Internet chat rooms for transmission of messages among computer users concerning radio, music, blogs, podcasts, DJs, pictures, videos, books, games, movies and television; portal services for providing users access to a communications or computer network; providing e-mail services; radio and television broadcasting services; Internet broadcasting services; news agency services for electronic transmission; text and voice messaging services; consultancy, information and advisory services relating to the aforesaid telecommunications and communication services,” and “education, namely, conducting classes, seminars,

conferences and workshops in the fields of entrepreneurship, transportation, telecommunications, hospitality and entertainment; providing training in the fields of entrepreneurship, transportation, telecommunications, hospitality and entertainment; entertainment services, namely, radio, television and Internet programs, blogs and podcasts in the fields of music, entertainment and news; organizing community sporting and cultural activities; production, distribution, presentation, syndication, networking and rental of sound and video recordings including television and radio programs, films and news programs; interactive entertainment, namely, presentation of live show performances, stage plays and music; concerts; recording studio services and the provision of recording studio facilities; audio recording services; provision and rental of radio and television studios and broadcasting facilities; interactive information relating to education, entertainment, sporting and cultural activities, and radio and television entertainment provided on-line from computer databases or from facilities provided on the Internet; publication services, namely, book publication services; consultancy, information and advisory services all relating to the aforesaid educational and entertainment services;”

- 49)U.S. Registration No. 4,419,522 for VIRGIN AMERICA for “Online retail store services featuring apparel, accessories, fragrances, watches, jewelry, sunglasses, electronics, cases for electronic products, gift cards, toys, model airplanes, liquor, cosmetics, luggage, bags, pet products, furniture, cookware, coffee makers, golf equipment, wall art, key rings;”
- 50)U.S. Registration No. 4,419,523 for VIRGIN AMERICA for “Jewelry; Key rings of precious metals; Watches;”
- 51)U.S. Registration No. 4,467,644 for VIRGIN for “Entertainment services, namely, providing games of skill and chance via the Internet; providing a web-based system and on-line portal for customers to participate in on-line gaming; on-line gambling services; on-line lottery services;”
- 52)U.S. Registration No. 4,467,646 for VIRGIN for “Entertainment services, namely, providing games of skill and chance via the Internet; providing a web-based system and on-line portal for customers to participate in on-line gaming; on-line gambling services; on-line lottery services;”
- 53)U.S. Registration No. 4,481,359 for VIRGIN GALACTIC for “aircraft, airplanes, space vehicles, and structural parts therefor,” “pictures; prints; writing instruments; event programs; photographs; paper; note pads; folders; and stationery,” “all-purpose sports bags; all-purpose carrying bags,” “clothing, namely, suits, flight suits, shirts, t-shirts, sweatshirts, track suits, jackets, coats, blazers, sweaters, hats, and headwear,” “toy models of aircraft, airplanes, space vehicles, and parts therefor,” and “air

transportation; freight transportation by air; transportation of passengers by air; airport services; launching of space vehicles for others; transportation of passengers and freight through space; space travel agency services, namely, booking of transportation into space;”

54)U.S. Registration No. 4,559,134 for VIRGIN MOBILE and Design for “Mobile telephones, telephones, modems, and accessories therefor, namely, batteries, battery chargers, power supplies, charger adapters, phone clips, phone covers, phone cases, ear phones, headphones, receivers, microphones, car kits for the adaptation of portable communication apparatus and instruments for vehicular use, cables, hands free microphones, phone holders, car chargers, data cables, electrical wires and handsets, and memory cards,” “Retail store services featuring telecommunication apparatus, devices, and accessories; on-line retail store services featuring telecommunication apparatus, devices, and accessories; telephone directory services,” and “Telecommunications and communication services, namely, transmission of voice, data, graphics, images, audio, and video by means of telecommunications networks, wireless communication networks, and the Internet; personal communications services; pager services; electronic mail services; transmission or broadcast of news and information for others via telephone, including the internet; consultancy, information and advisory services relating to the aforesaid telecommunications and communication services;”

55)U.S. Registration No. 4,638,930 for VIRGIN LIVE for “Apparatus for recording, transmission, or reproduction of sound or images; blank magnetic data carriers, pre-recorded magnetic data carriers featuring sound or video recordings, blank audio and video recording discs, pre-recorded audio and video recording discs featuring music, entertainment, sporting and cultural activities, television, movies, books, pictures, and videos; compact discs, DVDs, and other digital recording media featuring radio, music, blogs, podcasts, DJs, pictures, videos, books, movies, and television; mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment, and computers; computer software for use in personal computers, computer game consoles, and consumer electronics products for use in the transmission, reception, and storage of data, images, and digital information in the fields of music, entertainment, leisure and lifestyle, sporting and cultural activities, television, movies, books, pictures, videos, podcasts, and blogs; computer hardware; computer software for use in personal computers, computer game consoles, and consumer electronics products for use in the transmission, reception, and storage of data, images, and digital information in the fields of music, entertainment, leisure and lifestyle, sporting and cultural activities, television, movies, books, pictures, videos, podcasts, and blogs downloadable from the Internet; telecommunications

apparatus, namely, telephones; mobile telecommunication apparatus, namely, personal digital assistants, pocket PCs, mobile telephones, and laptop computers; telecommunications network apparatus, namely, microphones, pickups, amplifiers, and speakers; drivers software for telecommunications networks and for telecommunications apparatus; mobile telephone covers not made of paper; mobile telephone cases; downloadable electronic publications in the nature of books, magazines, articles, catalogs, and brochures featuring music, entertainment, leisure and lifestyle, sporting and cultural activities, services for providing food and drink, television, movies, books, pictures, videos, podcasts, and blogs; apparatus for use in broadcasting, transmission, receiving, processing, reproducing, encoding, and decoding of radio and television programs, and other audio, video, and image data; apparatus for use in broadcasting, transmission, receiving, processing, reproducing, encoding, and decoding of digital media content; video recordings, CDs, CD-Roms, DVDs, mini-disks, CD-Is featuring music, entertainment, leisure and lifestyle, sporting and cultural activities, television, movies, books, pictures, and videos; audio, video, and audio-visual recordings featuring music, entertainment, leisure and lifestyle, sporting and cultural activities, television, movies, books, pictures, and videos; cinematographical films featuring music, entertainment, leisure and lifestyle, sporting and cultural activities, television, movies, books, pictures, and videos; computer games software; computer software and telecommunications computer hardware to enable connection to databases and the Internet; digital music downloadable from the Internet; digital music downloadable from MP3 Internet websites; magnetically-encoded cards for carrying data; parts and fittings for all the aforesaid goods,” “paper; cardboard; paper and cardboard goods, namely, stationery, envelopes, notebooks, note pads, stickers, address books, appointment books, blank journal books, diaries, postcards, calendars, wrapping paper, posters, art paper, art prints, art pictures, art etchings, art books, binders, writing pads, folders, and packaging materials; printed matter, namely, books, magazines, articles, catalogs, and brochures featuring music, entertainment, leisure and lifestyle, sporting and cultural activities, services for providing food and drink, television, movies, books, pictures, and videos; bookbinding material; photographs; adhesives for stationery or household purposes; paint brushes; typewriters and office requisites, namely, writing instruments, pens, pencils, crayons, markers, erasers, sharpeners, rulers, pencil cases and holders, desktop business card holders, labels, mouse pads, highlighters, calculators, staplers, paper trimmers, stencils, stickers, and ring binders; printed instructional and teaching material in the fields of music, entertainment, leisure and lifestyle, sporting and cultural activities, television, movies, books, pictures, and videos; plastic materials for packaging, namely, plastic bags; printers' type; printing blocks; plastic cards; printed publications, namely, books, magazines, articles, catalogs, and brochures featuring music, entertainment, leisure and lifestyle,

sporting and cultural activities, services for providing food and drink, television, movies, books, pictures, and videos; printed guides for sporting and cultural events; brochures about sporting and cultural events; printed timetables; printed pricelists; in-flight magazines in the fields of music, entertainment, leisure and lifestyle, sporting and cultural activities, news on current events, business, television, movies, books, pictures, videos, podcasts, and blogs; paper bags; printed event programs; printed tickets; parts and fittings for all the aforesaid goods,” “advertising; business management; business administration; advertising, promotion, marketing, business management, and business consultancy services relating to entertainment, sporting, and cultural activities, services for providing food and drink, music and entertainment, leisure and lifestyle, and marketing and promotion services; arranging of auction sales; retail store services and on-line retail store services featuring radios, records, music, books and comics, clothing, cosmetics and jewellery, perfumery, fashion accessories, media and consumer electronic devices, toys and games, cameras, personal grooming products, stationery, bags, wallets, confectionery, linens, and fabrics; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services in relation to the aforesaid services provided over a telecommunications network,” “telecommunications services, namely, transmission of voice, data, graphics, images, audio, and video by means of telecommunications networks; mobile telecommunications services, namely, transmission of voice, data, graphics, images, audio, and video by means of wireless telecommunications networks; telecommunication services provided via Internet platforms and portals, namely, transmission of voice, data, graphics, images, audio, and video by means of the Internet; providing access to portals on the Internet; mobile telecommunications network services, namely, mobile and wireless telephone communications, electronic mail, electronic voice messaging, namely, recording, storage, and subsequent transmission of voice messages by mobile telephone, electronic transmission of voice, video, messages, and data, voice transmission, voice mail, digital text messaging, and paging services; fixed line telephone communication services; providing mobile virtual private network (VPN) services; provision of broadband telecommunications access; wireless broadband communication services; broadcasting services, namely, television broadcasting, video broadcasting, Internet broadcasting, radio broadcasting, satellite broadcasting, and audio broadcasting; Internet access provider services; email and text messaging services; services of a network provider, namely, rental and handling of access time and providing telecommunications connections to data networks and databases, in particular, the Internet; communications services, namely, providing telecommunications connections to databases; leasing of access time to a computer database; providing

access to computer databases; rental of access time to a computer database; computer-aided transmission of messages, audio, video, and image data; electronic communication services, namely, electronic transmission of data and documents among users of computers; television, cable television, satellite television, and subscription television broadcasting services; video text and television-screen-based information transmission services; news agency services for electronic transmission; text messaging services; text messaging services via SMS; audio relay services, namely, providing relay of sound from one room to another; providing Internet chat rooms; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services in relation to the aforesaid services provided over a telecommunications network,” and “education services, namely, providing classes, seminars, and workshops in the fields of entrepreneurship, transportation, media and telecommunications, hospitality, music and entertainment, travel and tourism, finance and money, health and wellbeing, leisure and lifestyle, social and environmental issues, and energy conservation; providing of training; entertainment, namely, arranging and conducting of concerts, providing ongoing radio, television, and Internet programs, blogs, and providing podcasts, all in the fields of music, entertainment, and current news; organizing sporting and cultural activities; booking services in relation to tickets for live entertainment events, entertainment, and festivals; production and presentation of live show performances; syndication of television and radio programs, films, sound and video recordings, interactive entertainment recordings, live shows, stage plays, entertainment exhibitions, and concerts; post-production editing services in the field of music, videos, and film, namely, editing of television and radio programs, films, sound and video recordings, interactive entertainment recordings, computer games, live shows, CDIs, and CD-Roms; rental of television and radio program recordings, films, sound, and video recordings, interactive entertainment recordings, CDIs and CD-Roms featuring sound and video recordings, computer games, live show recordings, stage play recordings, entertainment exhibition recordings, and concert recordings; audio recording and production; music production services; multimedia publishing of electronic books and magazines; entertainment services, namely, providing blogs and podcasts in the fields of music, entertainment, and current news; syndication of electronic books, magazines, and podcasts in the fields of music, entertainment, and current news; written text editing; copy editing of electronic books, magazines, brochures, blogs, and podcasts; electronic games services provided by means of the Internet or any other communications network; publication services; information about education or entertainment provided on-line from a computer database or the Internet or by means of television or radio programs; providing on-line, non-downloadable

electronic publications in the nature of books, magazines, articles, catalogs, and brochures featuring music, entertainment, leisure and lifestyle, sporting and cultural activities, television, movies, books, pictures, videos, podcasts, and blogs; publication of electronic books and journals on-line; news reporters services; providing non-downloadable digital music from the Internet; entertainment in the nature of live music festivals; organising music festivals; organising of sporting, leisure, and entertainment events; organising of sporting, leisure, and entertainment events relating to charitable fundraising purposes; entertainment services, namely, organising, conducting, and supervising competitions in the field of entertainment, lotteries, and prize drawings in the nature of contests; health and fitness club services, namely, providing instruction and equipment in the field of physical exercise; exercise and fitness classes; provision of swimming pool facilities; personal trainer services; cruise ship entertainment services, namely, presentation of live show performances, music concerts, musicals, variety shows, dance performances, and comedy shows; holiday camp services; cinema facilities; information and advisory services relating to the aforesaid; information and advisory services relating to the aforesaid services provided on-line from a computer database or the Internet; information and advisory services in relation to the aforesaid services provided over a telecommunications network;”

56)U.S. Registration No. 4,696,119 for VIRGIN for “Hotel services;”

57)U.S. Registration No. 4,696,120 for VIRGIN (stylized) for “Hotel services;”

58)U.S. Registration No. 4,682,319 for VIRGIN GALACTIC (stylized) for “Aircraft, airplanes, space vehicles namely, astronautical vehicles, aeronautical vehicles, astronautical vehicles and parts therefor” “magazines featuring adventure travel and space exploration, writing instruments, newsletters in the field of space travel news and events, photographs, paper, note pads, folders and stationery” “Clothing, namely, suits, shirts, t-shirts, jackets, coats, hats, outerwear, namely, parkas, wind vests, and coats” “Toy models of airplanes and spaceships” “Air transportation, freight transportation by air and space vehicles, passenger transportation by space vehicle, air and ground transportation, airport services, space vehicle transportation services, namely, launching of space vehicles, and transportation of passengers into space;”

59)U.S. Registration No. 4,688,904 for VIRGIN (stylized) for “Aircraft, airplanes, space vehicles namely, astronautical vehicles, aeronautical vehicles, astronautical vehicles and parts therefor” “Books featuring space travel and exploration, writing instruments, event programs, posters, guide books featuring outer space travel and amenities, newsletters in the field of space travel news and events, photographs, paper, note pads, folders

and stationery” “Clothing, namely, shirts, T-shirts, jackets, coats, hats, headwear, outerwear, namely, parkas, wind vests, and coats” “Toy models of airplanes, spaceships, toys, namely, space vehicles” “Air transportation, freight transportation by air and space vehicles, passenger transportation by space vehicle, air and ground transportation, airport services, travel agency services, namely, making reservations and bookings for transportation, space vehicle transportation services, namely, launching of space vehicles, space travel agency services, namely, booking of transportation into space, and transportation of passengers into space;”

60)U.S. Registration No. 4,679,093 for VIRGIN PRODUCED for “downloadable computer application software for mobile devices, computers, handheld computers, and tablets, namely, software for transmission of audio, video, and multimedia programming,” “webcasting; audio, video, and multimedia broadcasting via the Internet and other communications networks; transmission of electronic media, multimedia content, videos, movies, audio content, and information via the Internet and other communications networks,” “entertainment services in the nature of development, creation, production, post-production, and distribution services of multimedia entertainment content; provision of non-downloadable audios, videos, and multimedia programs featuring music, television programs movies, and interactive games via an inflight entertainment system;”

61)U.S. Registration No. 4,804,560 for VIRGIN PULSE for “Pedometers; computer operating software for use in measuring, recording, and tracking weight, blood pressure, body fat, and biometric data; computer application software for mobile phones, namely, software for use in managing individuals' personal fitness, nutrition, health, and progress tracking” “Promoting the sale of products and services of others through the administration of incentive award programs to promote personal health, physical fitness, the prevention of medical conditions, and the promotion of employee productivity, performance, recognition, and morale; promoting public awareness of the health and fitness benefits of physical activity” “Arranging and conducting incentive award programs to encourage the frequent, continued, and effective practice of physical exercise; providing physical fitness assessment and consultation to individuals to help them make physical fitness, strength, conditioning, and exercise improvements in their daily living; monitoring the fitness progress of individuals to help them make physical fitness, strength, conditioning, and exercise improvements in their daily living; providing online information and advice in the field of physical fitness” “Platform as a service (PAAS) featuring computer software platforms for use in managing individuals' personal fitness, nutrition, health, and progress; platform as a service (PAAS) featuring computer software platforms for enabling companies and organizations to administer and manage programs to promote employee

productivity, performance, recognition, and morale; software as a service (SAAS) services featuring software for use in managing individuals' personal fitness, nutrition, health, and progress; software as a service (SAAS) services featuring software for enabling companies and organizations to administer and manage programs to promote employee productivity, performance, recognition, and morale” “Providing assistance, fitness evaluation, and consultation to organizations and companies to assist their employees or members in making health, wellness, and nutritional changes to improve health; providing health programs, namely, wellness programs; providing a website featuring information about health, wellness, and nutrition; providing information and advisory services relating to health, wellness, and nutrition programs;”

- 62) U.S. Registration No. 4,804,585 for VIRGIN PULSE and Design for “Pedometers; computer operating software for use in measuring, recording, and tracking weight, blood pressure, body fat, and biometric data; computer application software for mobile phones, namely, software for use in managing individuals' personal fitness, nutrition, health, and progress tracking” “Promoting the sale of products and services of others through the administration of incentive award programs to promote personal health, physical fitness, the prevention of medical conditions, and the promotion of employee productivity, performance, recognition, and morale; promoting public awareness of the health and fitness benefits of physical activity” “Arranging and conducting incentive award programs to encourage the frequent, continued, and effective practice of physical exercise; providing physical fitness assessment and consultation to individuals to help them make physical fitness, strength, conditioning, and exercise improvements in their daily living; monitoring the fitness progress of individuals to help them make physical fitness, strength, conditioning, and exercise improvements in their daily living; providing online information and advice in the field of physical fitness” “Platform as a service (PAAS) featuring computer software platforms for use in managing individuals' personal fitness, nutrition, health, and progress; platform as a service (PAAS) featuring computer software platforms for enabling companies and organizations to administer and manage programs to promote employee productivity, performance, recognition, and morale; software as a service (SAAS) services featuring software for use in managing individuals' personal fitness, nutrition, health, and progress; software as a service (SAAS) services featuring software for enabling companies and organizations to administer and manage programs to promote employee productivity, performance, recognition, and morale” “Providing assistance, fitness evaluation, and consultation to organizations and companies to assist their employees or members in making health, wellness, and nutritional changes to improve health; providing health programs, namely, wellness programs; providing a website featuring

information about health, wellness, and nutrition; providing information and advisory services relating to health, wellness, and nutrition programs;”

63)U.S. Registration No. 4,865,664 VIRGIN “bar services; hotel accommodation services; restaurant services;”

64)U.S. Registration No. 4,865,665 VIRGIN (stylized) “bar services; hotel accommodation services; restaurant services;”

65)U.S. Registration No. 4,865,667 VIRGIN HOTELS (stylized) “bar services; hotel accommodation services; hotel services; restaurant services;”

66)U.S. Registration No. 4,865,666 VIRGIN HOTELS “bar services; hotel accommodation services; hotel services; restaurant services;”

67)U.S. Registration No. 4,897,594 VIRGIN “musical sound recordings; downloadable musical sound recordings; downloadable digital musical sound recordings provided from MP3 internet websites” “Promotion and distributorship in the field of sound recordings” “streaming of audio and visual material via a mobile application” “production of sound recordings;”

68)U.S. Registration No. 4,900,588 VIRGIN MONEY for “Financial services, namely, credit and loan services; financing and loan services, electronic loan origination services, electronic funds transfer service via the Internet to enable individuals to engage in lending and borrowing transactions with other individuals, arranging of loans, providing student loan information, student loan services;”

69)U.S. Registration No. 4,951,625 VIRGIN POKER for “Entertainment services, namely, providing games of skill and chance via the internet; providing a web-based system and on-line portal for customers to participate in on-line gaming; on-line gambling services; on-line lottery services;”

70)U.S. Registration No. 4,951,766 VIRGIN CASINO for “Entertainment services, namely, providing games of skill and chance, casino gaming, gambling, betting, and lottery services via the Internet; providing a web-based system and on-line portal for customers to participate in on-line gaming, gambling, betting, and lottery services; entertainment services in the nature of fantasy sports leagues and online fantasy games; providing a web-based system and on-line portal for customers to participate in on-line gaming, operation, and coordination of game tournaments, leagues, and tours; on-line gambling services; on-line betting services; on-line lottery services; providing information in the fields of gaming, gambling, betting and fantasy sports and games;”

- 71)U.S. Registration No. 4,941,508 VIRGIN DISRUPTORS for “Internet broadcasting services; video broadcasting; steaming of audio, visual, and audiovisual material on the Internet; streaming of video material on the Internet” “educational and entertainment services, namely, providing news and information via a website in the fields of business, entrepreneurship, education, travel and leisure, music, health and wellbeing, innovation, and current events; educational and entertainment services, namely, conducting and organizing programs in the fields of business, entrepreneurship, education, travel and leisure, music, health and wellbeing, innovation, and current events;”
- 72)U.S. Registration No. 4,941,507 VIRGIN DISRUPTORS (stylized) for “Internet broadcasting services; video broadcasting; streaming of audio, visual, and audiovisual material on the Internet; streaming of video material on the Internet” “educational and entertainment services, namely, providing news and information via a website in the fields of business, entrepreneurship, education, travel and leisure, music, health and wellbeing, innovation, and current events; educational and entertainment services, namely, conducting and organizing programs in the fields of business, entrepreneurship, education, travel and leisure, music, health and wellbeing, innovation, and current events;”
- 73)U.S. Registration No. 4,810,741 VIRGIN (stylized) for “Arranging and organizing of cruises; operating a cruise line namely, the transportation of passengers by water.”
- 74)U.S. Registration No. 5,076,291 for VIRGIN RECORDS for “Compact discs, DVDs and other digital recording media; computer software featuring musical sound recordings and musical video recordings; computer application software for the streaming of audio and visual material and purchasing music; digital music downloadable from the internet; videos, CDs, DVDs; audio, video and audio-visual recordings; digital music downloaded from the Internet; digital music provided from MP3 Internet websites; digital music downloadable from the internet” “printed matter, namely, covers and sleeves for disc and vinyl records” “advertising; advertising, promotion marketing, business management and business consultancy services relating to music and entertainment; marketing and promotion services” “entertainment in the nature of concerts; production, presentation, reviewing, editing of material with a visual and/or audio element, sound and video recordings, and concerts; production, presentation, reviewing, editing of digital media in the field of music; organizing of entertainment events; reservation and sale of tickets for concerts;” and
- 75)U.S. Registration No. 5,105,553 for VIRGIN for “Operation of fitness centers; providing health club services” “Health spa services, namely,

providing massage, facial and body treatment services, cosmetic body care services.”

39. Pursuant to 15 U.S.C. § 1057(b), VEL’s federal registrations are *prima facie* evidence of the validity of its VIRGIN Marks as well as VEL’s ownership and exclusive right to use its VIRGIN Marks in connection with the goods and services identified in the registration certificates. Moreover, several of the federal registrations for the VIRGIN Marks listed above are incontestable under 15 U.S.C. § 1065. VEL’s incontestable registrations are conclusive evidence of the validity of the mark listed in the registrations, VEL’s ownership of the mark, and VEL’s exclusive right to use the mark in commerce in connection with the identified services. 15 U.S.C. § 1115(b).

40. Defendant had constructive notice of VEL’s ownership of federally-registered rights to the VIRGIN Marks under 15 U.S.C. § 1072, at least as of September 1974.

41. VEL has a significant presence on the Internet, owning over 4,500 Internet domain names incorporating its VIRGIN Mark. The primary domain name, www.virgin.com, has been registered since September 10, 1997 and serves as a disbursement point for information on the various VIRGIN-branded businesses, goods, and services. VEL’s use of the VIRGIN Marks on the Internet and in its domain names reinforces the importance of the VIRGIN brand to VEL and strengthens the public recognition of VIRGIN by the consuming public.

42. VEL uses its VIRGIN Marks in advertising and marketing materials on a nationwide basis through various media, including but not limited to, newspapers, direct mail, websites, and trade magazines. VEL has invested a substantial amount of time

and money in advertising and promoting its goods and services under the VIRGIN Marks, spending millions of dollars in marketing efforts to promote the VIRGIN brand in the United States. This investment has translated into VIRGIN being a famous brand.

43. As a result of the substantial use of the VIRGIN Marks and extensive advertising and promotion of goods and services under VEL's VIRGIN Marks, and through favorable consumer acceptance and recognition, the VIRGIN Marks are exceedingly strong and the consuming public and the trade widely recognize the VIRGIN Marks as identifying VEL as the source of the premier goods and services offered in connection with VEL's VIRGIN Marks, including wine, other alcoholic and non-alcoholic beverages, water, and restaurant, bar, and hospitality services. The VIRGIN Marks symbolize an exceptional level of quality, reliability, and trustworthiness.

44. Accordingly, VEL's VIRGIN Marks are famous, having become so long prior to the acts complained of herein, and are assets of incalculable value as an identifier of VEL, its premier goods and services, and the goodwill associated therewith. In 2003, the United States Court of Appeals for the Second Circuit held that VIRGIN is a famous trademark entitled to a broad scope of protection in the United States. *Virgin Enterprises, Ltd. v. Nawab et al.* 335 F.3d 141,149 (2nd Cir. 2003).

DEFENDANT'S WILLFUL AND INTENTIONAL INFRINGEMENT OF VEL'S VIRGIN MARKS

45. VEL never authorized, licensed, or otherwise permitted Defendant to use the VIRGIN Marks, or any confusingly similar variation thereof, in connection with electronic cigarettes, "e-liquids," or other related accessories.

46. Some thirty years after VEL first offered products and services under the VIRGIN Marks at an undetermined date, but not later than January 1, 2012, Defendant

launched the VIRGIN VAPOR Website prominently displaying and using the VIRGIN VAPOR Mark in connection with e-cigarettes and e-liquids. From January 15, 2013 through early November 2013, VEL sought, through continued correspondence and negotiations with Defendant, to resolve this matter short of litigation.

THE SETTLEMENT AGREEMENT AND DEFENDANT'S CONTINUED ACTIONS

47. On or about November 19, 2013 VEL filed a federal complaint against Defendant for Willful Trademark Infringement, Trademark Dilution, Unfair Competition, and Illinois State Causes of Action.

48. Through continued correspondence, negotiations, and a Court ordered Settlement Conference with the Honorable Magistrate Judge Sidney I. Schenkier, Defendant and VEL entered into and signed a Confidential Settlement Agreement and Mutual General Release effective June 11, 2015 ("Settlement Agreement") detailing Defendant's rebranding requirements and whereby Defendant acknowledged VEL's prior worldwide rights in and to the VIRGIN mark.

49. Pursuant to the Settlement Agreement, Defendant was obligated to rebrand its company name, logo, website, all social media pages, new packaging labels, new promotional materials, and other new written/paper material by June 12, 2016.

50. Defendant made no attempt to comply with its obligations to rebrand under the terms of the Settlement Agreement prior to the June 12, 2016 deadline. Despite proper and repeated notice by VEL that Defendant was in breach of the Settlement Agreement, as well as attempts by VEL to reach a negotiated resolution, Defendant willfully continued its breach for over two months.

51. After notice and continued negotiation, Defendant took initial steps toward compliance on or about September 2, 2016. However, as of the filing of this Complaint, well past the deadline set in the Settlement Agreement, Defendant failed to rebrand the company name, logo, website, website metadata, all social media pages, new packaging, new labels, new promotional materials and other new written/paper materials as per the terms of the Settlement Agreement. Representative printouts from the VIRGIN VAPOR Website and Defendant's Facebook page are attached at Exhibit A.

52. VEL never authorized, licensed, or otherwise permitted Defendant to use the VIRGIN Marks, to advertise, market and promote its products under the VIRGIN Marks, or any confusingly similar variation thereof, in connection with electronic cigarettes, "e-liquids," or other related accessories after June 11, 2016.

53. As of the filing of this Complaint, and in violation of the express terms of the Settlement Agreement, Defendant maintains the VIRGIN VAPOR Website prominently displaying and using the VIRGIN VAPOR Mark in connection with e-cigarettes and e-liquids and using the VIRGIN VAPOR Mark in the website metadata.

54. As of the filing of this Complaint, and in violation of the express terms of the Settlement Agreement, Defendant continues to use the VIRGIN VAPOR Mark, and confusingly similar variations thereof, in commerce without the authorization of VEL in a manner that is likely to mislead, deceive, and confuse the purchasing public and the trade. It is likely that as a result of that use, consumers will mistakenly believe that Defendant is connected, associated, or in some way affiliated with VEL, when in fact no such connection, association, or affiliation exists

THE HARM AND DAMAGES CAUSED BY DEFENDANT'S ACTIONS

55. Defendant's actions were and are willful and intentional acts intended to trade on the reputation and goodwill of VEL. Defendant had constructive notice of VEL's ownership of the VIRGIN Mark dating back to 1974, was provided affirmative notice of VEL's trademark rights in September 2012, and acknowledged VEL's rights in the Settlement Agreement effective June 11, 2015. Despite this, Defendant has willfully breached the Settlement Agreement and continued on its intentional path of infringing upon VEL's rights.

56. By continuing to use a mark confusingly similar to VEL's VIRGIN Marks past the effective date of the Settlement Agreement and failing to comply with the terms of the Settlement Agreement, Defendant has caused and inflicted harm upon VEL in the State of Illinois, knowing that such harm would be felt here.

57. Defendant's unauthorized use after June 11, 2016 of the VIRGIN VAPOR Mark, the VIRGIN VAPOR Website and the related social media sites is likely to mislead, deceive, and confuse the purchasing public and the trade. It is likely that as a result of that use, consumers will mistakenly believe that Defendant is connected, associated, or in some way affiliated with VEL, when in fact no such connection, association, or affiliation exists.

58. Defendant had no legitimate reason to continue using the VIRGIN VAPOR Mark and had over twelve months since the effective date of the Settlement Agreement to rebrand in compliance with the terms of the Settlement Agreement. Defendant's bad faith continued use and failure to rebrand, was and is an intentional act to trade off the goodwill and reputation of VEL.

59. Defendant's continued use of the VIRGIN Marks in connection with products that are unregulated, increasing the potential harm to VEL's reputation and the goodwill in the VIRGIN Marks. Moreover, Defendant advertises that the products sold under the VIRGIN VAPOR mark are organic and natural, but, upon information and belief, these products are likely not natural or organic – causing further damage to VEL and harm to the goodwill in the VIRGIN Marks.

60. Defendant's continued conduct as complained of herein causes damage and irreparable injury to VEL, and to its goodwill and business reputation. As a direct and proximate result of Defendant's acts, VEL has suffered, and will continue to suffer, irreparable harm, damages, and economic injury.

61. VEL has no adequate remedy at law, and Defendant has proven that unless it is restrained and enjoined by the Court, the described acts will continue to cause damage and irreparable injury to VEL, including damage to its goodwill and business reputation. VEL cannot ascertain the precise amount of its damages at this time.

COUNT I
FEDERAL TRADEMARK INFRINGEMENT
15 U.S.C. § 1114(1)

62. As the first ground for relief, VEL hereby alleges violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1). VEL repeats and realleges the allegations of paragraphs 1 through 61, as though fully set forth herein.

63. Defendant's unauthorized and infringing use of the VIRGIN Marks, as alleged herein, is likely to cause confusion, mistake, or deception as to the source, sponsorship, or approval of Defendant's goods and services by VEL. The consuming

public and the trade are likely to believe that Defendant's goods and services originate with VEL, are licensed, sponsored, or approved by VEL, or in some way connected with or related to VEL, in violation of Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

64. Defendant's unauthorized and infringing use of the VIRGIN Marks, as alleged herein, constitutes intentional and willful infringement of VEL's rights in and to its federally-registered VIRGIN Marks in violation Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1) causing damage to VEL.

65. These infringing acts have occurred in interstate and/or United States commerce and have caused, and unless restrained by this Court will continue to cause, serious and irreparable injury to VEL, for which VEL has no adequate remedy at law.

COUNT II
FEDERAL UNFAIR COMPETITION
15 U.S.C. § 1125(a)

66. As the second ground for relief, VEL hereby alleges violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). VEL repeats and realleges the allegations of paragraphs 1 through 65, as though fully set forth herein.

67. Defendant's unauthorized use of the VIRGIN Marks, as alleged herein, constitutes use of a false designation of origin and false or misleading representation in interstate commerce, which wrongly and falsely designates, describes and represents the origin of Defendant's goods and services as originating from or being connected with VEL, and is likely to cause confusion, or to cause mistake, or to deceive as to Defendant's affiliation, connection, or association with VEL, or as to the origin, sponsorship, or approval of Defendant's goods and services by VEL in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) causing damage to VEL.

68. These acts have occurred in interstate and/or United States commerce and have caused, and unless restrained by this Court will continue to cause, serious and irreparable injury to VEL, for which VEL has no adequate remedy at law.

COUNT III
FEDERAL TRADEMARK DILUTION BY BLURRING
15 U.S.C. § 1125(c)

69. As the third ground for relief, VEL hereby alleges violation of the Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c). VEL repeats and realleges the allegations of paragraphs 1 through 68, as though fully set forth herein.

70. As a result of duration, extent, and geographic reach of VEL's use of the VIRGIN Marks as well as advertising and publicity associated with the VIRGIN Marks, the VIRGIN Marks have achieved an extensive degree of distinctiveness and are famous trademarks. The VIRGIN Marks are widely recognized by the consuming public as a designation of source of VEL's services. Defendant began using the VIRGIN VAPOR Mark in interstate and/or United States commerce after the VIRGIN Marks became famous and distinctive.

71. Because of the similarity of the marks, Defendant's commercial use of the VIRGIN VAPOR Mark is likely to cause dilution by blurring, by creating a likelihood of association with VEL's famous VIRGIN Marks. Defendant's commercial use is likely to impair the distinctiveness of VEL's famous VIRGIN Marks, in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c) causing damage to VEL.

72. These acts have caused, and unless restrained by this Court will continue to cause, serious and irreparable injury to VEL, for which VEL has no adequate remedy at law.

COUNT IV
FEDERAL TRADEMARK DILUTION BY TARNISHMENT
15 U.S.C. § 1125(c)

73. As the fourth ground for relief, VEL hereby alleges violation of the Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c). VEL repeats and realleges the allegations of paragraphs 1 through 72, as though fully set forth herein.

74. As a result of duration, extent, and geographic reach of VEL's use of the VIRGIN Marks and advertising and publicity associated with the VIRGIN Marks, the VIRGIN Marks have achieved an extensive degree of distinctiveness and are famous trademarks. The VIRGIN Marks are widely recognized by the consuming public as a designation of source of VEL's services. Defendant began using the VIRGIN VAPOR Mark in interstate and/or United States commerce after the VIRGIN Marks became famous and distinctive.

75. Because of the similarity of the marks, Defendant's commercial use of the VIRGIN VAPOR Mark is likely to cause dilution by tarnishment, by harming the reputation of VEL's famous VIRGIN Marks. Defendant's commercial use is likely to impair the distinctiveness of VEL's famous VIRGIN Marks, in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c) causing damage to VEL.

76. These acts have caused, and unless restrained by this Court will continue to cause, serious and irreparable injury to VEL, for which VEL has no adequate remedy at law.

COUNT V
BREACH OF CONTRACT

77. As the fifth ground for relief, VEL hereby alleges breach of contract under Illinois common law. VEL repeats and realleges the allegations of paragraphs 1 through 76, as though fully set forth herein.

78. The Settlement Agreement is a valid and enforceable contract between VEL and Defendant.

79. VEL has performed under the Settlement Agreement.

80. Defendant, through the actions as complained of herein, has breached the Settlement Agreement causing damage to VEL.

81. Defendant's actions in breach of the Settlement Agreement have caused serious and irreparable injury to VEL.

COUNT VI
ILLINOIS DECEPTIVE TRADE PRACTICES
815 ILCS 510/1 *et seq.*

82. As the sixth ground for relief, VEL hereby alleges violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS 510/1, *et seq.* VEL repeats and realleges the allegations of paragraphs 1 through 83, as though fully set forth herein.

83. Defendant's unauthorized use of the VIRGIN Marks, as alleged herein, has caused, and is likely to cause in the future, a likelihood of confusion or misunderstanding as to the sponsorship, approval, affiliation, or connection of Defendant's and VEL's businesses, inasmuch as it gives rise to the incorrect belief that Defendant's business has some connection with VEL. These acts constitute deceptive trade practices in the course of Defendant's business, in violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS 510/1, *et seq.* causing damage to VEL.

84. These acts have caused, and unless restrained by this Court will continue to cause, serious and irreparable injury to VEL, for which VEL has no adequate remedy at law.

**COUNT VII
ILLINOIS COMMON LAW UNFAIR COMPETITION**

85. As the seventh ground for relief, VEL hereby alleges unfair competition under Illinois common law. VEL repeats and realleges the allegations of paragraphs 1 through 84, as though fully set forth herein.

86. As a result of its actions complained of herein, Defendant has misappropriated valuable property rights of VEL, has passed off its goods and services as those of VEL, is trading on the goodwill symbolized by the VEL's trademark rights as alleged herein, and those acts are likely to cause confusion or mistake, or to deceive members of the consuming public and the trade. Said acts constitute unfair competition in violation of the common law of the State of Illinois causing damage to VEL.

87. These acts have caused, and unless restrained by this Court will continue to cause, serious and irreparable injury to VEL, for which VEL has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, VEL prays that this Court enter a judgment and order:

1. That Defendant has willfully violated Sections 32(1), 43(a), and 43(c) of the Lanham Act;
2. That Defendant breached the Settlement Agreement;
3. That Defendant committed acts of unfair competition and deceptive business and trade practices;

4. That Defendant, its officers, directors, agents, servants, employees, affiliates, successors, shareholders, assigns, and attorneys, as well as all those in active concert or participation with them, be preliminarily and permanently enjoined and restrained from:

- A. Violating the Settlement Agreement, including but not limited to using the current logo and VIRGIN VAPOR Mark in metadata;
- B. Using the famous VIRGIN Marks;
- C. Doing any other act or thing calculated or likely to induce or cause confusion or the mistaken belief that Defendant is in any way affiliated, connected, or associated with VEL or its goods or services;
- D. Injuring VEL's business reputation and the goodwill associated with VEL's VIRGIN Marks, and from otherwise unfairly competing with VEL in any manner whatsoever;
- E. Passing off Defendant's goods and services as those of VEL; and
- F. Committing any acts which will blur, tarnish or dilute, or are likely to blur, tarnish or dilute the distinctive quality of the famous VIRGIN Marks.

5. That, pursuant to 15 U.S.C. §1118, Defendant be required to deliver up and destroy all products, labels, signs, packages, wrappers, advertisements, websites, social media sites, promotions, and all other matter in the custody or under the control of Defendant that violate the Settlement Agreement;

6. That, because of Defendant's willful actions and pursuant to 15 U.S.C. §1117, VEL be awarded monetary relief and damages in an amount to be fixed by the Court in its discretion as just, including:

- A. (i) all profits received by Defendant from sales and revenues of any kind made as a result of its actions from June 12, 2016, and (ii) all damages sustained by VEL as a result of Defendant's actions from June 12, 2016, and that such profits and damages be trebled because of Defendant's exceptional and willful actions; and
- B. the costs of the action.

7. That pursuant to 15 U.S.C. §1116, Defendant be directed to file with the Court and serve on VEL within thirty (30) days after issuance of an injunction, a report in writing and under oath setting forth in detail the manner and form in which Defendant has complied with the injunction;

8. That because of the exceptional nature of this case resulting from Defendant's deliberate and willful infringing actions, this Court award to VEL all reasonable attorneys' fees, costs, and disbursements incurred by it as a result of this action pursuant to 15 U.S.C. § 1117(a), and (b), and 815 ILCS §510/3; and

9. That VEL shall have such other and further relief as this Court may deem just.

Respectfully submitted,

VIRGIN ENTERPRISES LIMITED

Dated: April 11, 2017

By: /s Joseph V. Norvell

Joseph V. Norvell (Reg. No. 6225747)
Joseph T. Kucala, Jr. (Reg. No. 6275312)
Alice A. Kelly (Reg. No. 6281897)
Shyla N. Jones (Reg. No. 6309356)
Stephanie L. Crigler (Reg. No. 6323770)
NORVELL IP llc
1776 Ash Street
Northfield, IL 60093
Telephone: (888) 315-0732
Facsimile: (312) 268-5063
courts@norvellip.com

Attorneys for Virgin Enterprises Limited